

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN BILL TASH**, on March 15, 1999 at 3:00 P.M., in Room 437 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Bill Tash, Chairman (R)  
Rep. Hal Harper, Vice Chairman (D)  
Rep. Cindy Younkin, Vice Chairman (R)  
Rep. Rod Bitney (R)  
Rep. Aubyn A. Curtiss (R)  
Rep. Rick Dale (R)  
Rep. Bill Eggers (D)  
Rep. Ron Erickson (D)  
Rep. David Ewer (D)  
Rep. Gail Gutsche (D)  
Rep. Joan Hurdle (D)  
Rep. Dan McGee (R)  
Rep. Douglas Mood (R)  
Rep. Karl Ohs (R)  
Rep. Scott J. Orr (R)  
Rep. Bob Raney (D)  
Rep. Bob Story (R)  
Rep. Jay Stovall (R)  
Rep. Carley Tuss (D)  
Rep. Doug Wagner (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Todd Everts, Legislative Branch  
Deb Thompson, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 412, SB 321, SB 216, SB 462, Posted 3/10/95

Executive Action: SB 344, SB 245, SB 429, SB  
276, SB 371, SB 216

### HEARING ON SENATE BILL 412

**Sponsor:** Sen. Spook Stang, SD 36, described key elements of the bill. He said this bill was worked out between the forest products industry and the Department of Natural Resources and Conservation. It would amend the statute dealing with logging slash to reduce the hazards of an accidental wildfire. **{Tape : 1; Side : A; Approx. Time Counter : 1.1 - 5.5}**

**Proponents:** Bud Clinch, Director of DNRC, discussed the bill as a compromise between the industry and the department. The bill increases the departments authority for enforcement and lessens some restrictions for those in compliance. **{Tape : 1; Side : A; Approx. Time Counter : 5.5 - 6.9}**

Cary Hegreberg, representing Montana Wood Products Association, discussed SB 412 as a collaborative piece of legislation. He pointed out the need to modernize as technical changes are implemented. **{Tape : 1; Side : A; Approx. Time Counter : 6.9 - 7.1}**

Patrick Heffernan, Montana Logging Association, presented written testimony. **EXHIBIT(nah58a01)** **{Tape : 1; Side : A; Approx. Time Counter : 7.1 - 9.6}**

**Opponents:** None.

**Questions from Committee Members and Responses:** Rep. Wagner asked about equal treatment of those in the industry. Clinch replied their legal council had reviewed the bill. He noted this addressed specific thresholds of past non-performance of statutes. It was tied to previous violations of statutory requirements. **{Tape : 1; Side : A; Approx. Time Counter : 9.6 - 11.3}**

**Closing by Sponsor:** Sen. Stang closed. He noted this was a good compromise for both industry and the department.

### HEARING ON SENATE BILL 321

**Sponsor:** Sen. Reiny Jabs, SD 3, presented the bill. He described the bill as revising the definition of container sites, which are the dumpsters. These are solid waste management

facilities which will apply to all counties. **{Tape : 1; Side : A; Approx. Time Counter : 16.8 - 18.7}**

**Proponents:** Gordon Morris, Director of the Association of Counties, spoke in favor of the bill.

Jon Dilliard, representing DEQ, said the department supported the bill. He said it removes an inappropriate limitation and levels the playing field for all solid waste districts out there. **{Tape : 1; Side : A; Approx. Time Counter : 19.7 - 20}**

**Opponents:** None.

**Questions from Committee Members and Responses:** Rep. Orr asked about other classes of counties. Dilliard replied that those counties who used a container site as intended under this section would be considered a transfer station. That would be required to have a license from the department. Under the changes in the bill, as long as the limitations are met there would be no license required and they could continue to operate. **{Tape : 1; Side : A; Approx. Time Counter : 20 - 21.2}**

Rep. Story asked about the definition of container sites and transfer stations. He asked if an entity had a garbage truck, the DEQ wouldn't let them dump their trucks at a container site; they had to take them to a transfer station. Dilliard replied that was partially true, but the actual problem was under the definition of a transfer station. It was where garbage was taken from one collection vehicle and put into another collection vehicle for transport to an ultimate disposal facility. When a collection truck backed up to dump their load into a container site, they then became a transfer station and were required to be licensed by the state. **{Tape : 1; Side : A; Approx. Time Counter : 21.2 - 26}**

**Closing by Sponsor:** Sen. Jabs closed. This bill would give flexibility for all counties. **{Tape : 1; Side : A; Approx. Time Counter : 26 - 32.5}**

#### **HEARING ON SENATE BILL 216**

**Sponsor:** Sen. Chuck Swysgood, SD 17, presented the bill. He explained the bill was the water compact between the U.S. Fish and Wildlife Service and the state of Montana regarding the Red Rock National Wildlife Refuge and Wilderness Area.

**EXHIBIT (nah58a02)** He explained the need of an amendment which clarified the ranges and section. **EXHIBIT (nah58a03)**

**Proponents:** Chris Tweeten, Chairman of the Reserved Water Rights Compact Commission, spoke in favor of the bill. He described his background on the compact commission and the legislative responsibilities regarding the 1979 statewide water adjudication process. He described other compacts and the elaborate public process to address concerns of water users. **{Tape : 1; Side : A; Approx. Time Counter : 32.5 - 44.2}**

Sen. Bea McCarthy, SD 29, member of the compact commission, spoke in favor of the bill. She had visited with landowners and they had worked hard to get the compact worked out. **{Tape : 1; Side : A; Approx. Time Counter : 44.2 - 45}**

Rep. Sam Rose, HD 87, spoke in favor of the bill. He said it was a touchy subject to rural people and ranchers but was handled well and a compromise worked out. The U.S. Fish and Wildlife had the early water rights and subordinated to others, which was quite an accomplishment. **{Tape : 1; Side : A; Approx. Time Counter : 45 - 47}**

Rep. Bill Tash, HD 34, spoke as a proponent. He described the negotiated settlement. Prior rights had been recognized. **{Tape : 1; Side : A; Approx. Time Counter : 47 - 47.9}**

Rep. Toni Hagener, HD 90, said she was a member of the Water Rights Compact Commission, and was in support of the bill. She pointed out this bill was carefully crafted to get input from all persons and agencies. **{Tape : 1; Side : A; Approx. Time Counter : 47.9 - 48.7}**

Barbara Cousins, legal council for the Reserved Water Rights Compact Commission, spoke in favor of the bill. She explained aspects of the bill, referring to Exhibit 2 fact sheet and letters. She gave a slide presentation showing the Red Rock drainage area. **{Tape : 1; Side : A; Approx. Time Counter : 48.7 - 60}**

Susan Cottingham, staff for the commission and standing in for Cheryl Williss from the Fish and Wildlife Service, referred to her testimony in Exhibit 2, regarding concessions in return for the basin closure. **{Tape : 1; Side : B; Approx. Time Counter : 4.6 - 6.2}**

Harley Harris, Assistant Attorney General appearing on behalf of Attorney General Joe Mazurek, spoke in support of SB 216. **{Tape : 1; Side : B; Approx. Time Counter : 6.2 - 7}**

Mike Murphy, Montana Water Resources Association, said this was a well negotiated compact with excellent representation. **{Tape : 1; Side : B; Approx. Time Counter : 7 - 7.5}**

**Opponents:** None.

**Questions from Committee Members and Responses:** **{Tape : 1; Side : B; Approx. Time Counter : 7.5 - 13.5}**

**Closing by Sponsor:** Sen. Swysgood closed. He noted how the bill addressed all concerns of those in the area. The compact recognized rights that were subordinate and the ranchers were satisfied.

#### **EXECUTIVE ACTION ON SENATE BILL 216**

Rep. Curtiss **MOVED DO CONCUR** SB 216. Rep. Tuss **MOVED** an amendment. The question was called on the amendment. The motion **PASSED** unanimously. Rep. McGee **MOVED** an amendment to have a comma after section 24. The question was called on the McGee amendment. The motion **PASSED** unanimously. Rep. Tuss **MOVED DO CONCUR AS AMENDED**. The question was called. The motion **PASSED** 19-1 with Rep. Wagner voting no. **{Tape : 1; Side : B; Approx. Time Counter : 15.1 - 18.2}**

#### **HEARING ON SENATE BILL 462**

**Sponsor:** Sen. Lorents Grosfield, SD 13, presented the bill. He explained the bill dealt with environmental control easements. **{Tape : 1; Side : B; Approx. Time Counter : 19.1 - 23.7}**

**Proponents:** Steve Pilcher, representing ARCO in support of SB 462. He presented a fact sheet regarding environmental control easements. **EXHIBIT(nah58a04) {Tape : 1; Side : B; Approx. Time Counter : 23.7 - 25}**

Don Allen, Western Environmental Trade Association, said this bill provided another option and tools. **{Tape : 1; Side : B; Approx. Time Counter : 27.9 - 28.8}**

Denise Mills, the Remediation Division Administrator at the Department of Environmental Quality, presented written testimony. **EXHIBIT(nah58a05) {Tape : 1; Side : B; Approx. Time Counter : 28.8 - 36}**

Jill Andrews, representing the Montana Mining Association, described the Old Works Golf Course in Anaconda, as a good example of environmental controls as a solution to the problem.

**{Tape : 1; Side : B; Approx. Time Counter : 36 - 36.3}**

Steve Wade, spoke on behalf of Burlington Northern Santa Fe Railway Company, in support of SB 462. He said they had learned from cleaning up sites that at the end of the cleanup, you need enforceable mechanisms to protect the remedy or to restrict access for future use of those properties. **{Tape : 1; Side : B; Approx. Time Counter : 36.3 - 37}**

Chris Gallus, representing the Montana Chamber of Commerce, spoke in support of the bill. **{Tape : 1; Side : B; Approx. Time Counter : 37 - 37.7}**

**Informational Witness:** Anne Hedges, representing Montana Environmental Information Center, spoke about a private entity holding an easement. She believed government should control this so the citizens health was protected. She pointed out a risk may still exist at the end of the term of the easement and this should be evaluated. **{Tape : 1; Side : B; Approx. Time Counter : 37.7 - 40.7}**

**Opponents:** None.

**Questions from Committee Members and Responses:** **{Tape : 1; Side : B; Approx. Time Counter : 40.7 - Tape : 2: A; Approx. Time Counter : 24}**

**Closing by Sponsor:** Sen. Grosfield closed. He pointed out positive results such as the fairground baseball fields over a landfill. He said institutional controls were realistic. **{Tape : 2; Side : A; Approx. Time Counter : 24 - 30.3}**

#### **EXECUTIVE ACTION ON SENATE BILL 429**

Rep. McGee **MOVED TO TABLE.** The question was called. The motion **PASSED** 11-9. **{Tape : 2; Side : A; Approx. Time Counter : 32.2 - 34}**

#### **EXECUTIVE ACTION ON SENATE BILL 276**

Rep. McGee **MOVED DO CONCUR.** The question was called. The motion **PASSED** unanimously. **{Tape : 2; Side : A; Approx. Time Counter : 34 - 36}**

**EXECUTIVE ACTION ON SENATE BILL 371**

Rep. Harper **MOVED DO CONCUR.** The question was called. The motion **PASSED** unanimously. **{Tape : 2; Side : A; Approx. Time Counter : 36 - 38.8}**

**EXECUTIVE ACTION ON SENATE BILL 344**

Rep. Dale **MOVED DO CONCUR.**

Rep. Harper discussed the initiative process and how this bill would be tinkering with that process. He felt this bill would reverse the will of the people.

Rep. McGee pointed out the Legislature was a Constitutional body set up to make law. He recognized that every Session legislators tinker with the laws. Tinkering also means getting rid of certain laws. The Constitution also sets up the Initiative process for the voters to act apart from the Legislature. In that capacity, they can make law; they can also amend the Constitution. He heard Rep. Harper say this Initiative would stand in place until another Initiative came along and modified or amended the first one. He asked how that was different from legislation. Since the Initiative is law, how was that any different from any other law, or more sanctified. **{Tape : 2; Side : A; Approx. Time Counter : 45 - 47}**

Rep. Harper responded this was the same status in terms of the law books. Often we change our minds and amend the bill after a period of time because situations change. He asked what had changed. This just happened and was just expressed. He pointed out it came at a bad time for those who did not agree with the outcome of the vote. This happened in a Session when the Supreme Court has just stricken down a constitutional amendment by the people and when there are a raft of bills coming down to restrict the people in their power of Initiative. **{Tape : 2; Side : A; Approx. Time Counter : 47 - 48}**

Rep. Dale pointed out this was a narrow viewpoint if we were addressing the constitutionality or the people's will, however a bad law is a bad law. He pointed out the issue of unintended consequences. When addressing the constitutionality issue you should consider the attempt at I-122, the subsequent promotion and passage of I-125, and the subsequent promotion of I-137 - which were calculated moves to remove from a certain group of people - because they are involved in an industry that some people think may not be a benefit to the state, removes from them

their right to defend themselves and then impose an all out ban on their activities. There was enough mis-information and conflicting information presented by the proponents of I-137 that it was confusing and deceptive. Technically, there is no good science that supports this initiative. He pointed out a minority of the counties should not rule the majority of the counties. People who don't have history in the state can pour money into things to sway the opinion in areas where people have not made the connection between resource production and our standard of living; that the will of the people should override all of the other information that didn't get out. **{Tape : 2; Side : A; Approx. Time Counter : 48 - 51.3}**

Rep. Curtiss described the questionnaire results that she distributed in December. The results indicated that people did not know what they were voting for. One of the questions said-"do you believe that passage of CI-137 will close down mining in the state". Some responded "I don't know", one person responded "I hope not, because I really favor utilization of our resources". There were two different questions. Only 10% indicated that they were not in favor of mining. She pointed out that this Legislature is always under close scrutiny. She said this Initiative compared to one four years ago that would have prohibited the escalation of property appraisals related to the sale of adjacent properties. Because of the information the voters were fed, they voted that down. They have been complaining about it ever since. People ask "why are my property valuations continually going up?" The people voted for this to keep on happening. She said this paralleled I-137, if people are not given the proper information, they will make a decision they will live to regret. She felt the result of this Initiative would be closing down one of the major industries in Montana. People in her district voted overwhelmingly against it. That is why she supported SB 344 and SB 345. **{Tape : 2; Side : A; Approx. Time Counter : 51.3 - 53.7}**

Rep. Raney pointed out the Initiative does not stop mining. It only stops cyanide heap leach open pit gold and silver mining. It was directed at a whole process of mining. The miners were not removed, but the mining companies were removed. He pointed out as many miners and mining sympathizers in Montana and outside of Montana who wanted to contribute to the anti-I-137 cause were capable of doing so if they just bothered to, but they did not. They relied and depended on mining companies to provide that money. If they would have chosen to organize they could have put up a huge fight if they would have chosen to. It comes back to the Initiative process put this all together. The Initiative process is what this bill is trying to overturn. **{Tape : 2; Side : A; Approx. Time Counter : 53.7 - 55.5}**

Rep. Eggers said the Initiative recall and referendum were the safeguards of democracy. If the Initiatives were equal to the legislative exercise, what does that leave us. That leaves a dual dilemma, one is a socio-economic dilemma and the other is the legal dilemma. He pointed out there was no question that there were serious economic and social consequences to CI-137. He questioned whether that was a compelling basis to overturn CI-137. He felt the playing field was even, they spend about the same money, no underhandedness or fraud or misrepresentations although there were references to some unfair tactics. There was a policy decision to make as to whether the socio-economic elements of the Initiative outweigh the force and effect of the Initiative as delivered. The numbers were 52% of the voting public voted in favor of it. There were now three solutions - the mining industry can go back to the public to have their own initiative. The second is if there was something legally defective about the initiative then the mining industry should go to court. The third choice is a Legislative "tinkering". He said he would recommend against that and suggested finding another solution. **{Tape : 2; Side : A; Approx. Time Counter : 55.5 - 59.6}**

Rep. Mood pointed out the single most important question that was asked at the hearing was if you didn't like Initiative I-137, why don't you get together and run your own Initiative to reverse it. He said he would agree if he felt this had been fair, open and honest sampling of what people in the state want. He related this to the Jobs and Income proposals. Who would want to come to this state with a \$10 million dollar investment who may not be liked by some of the residents of the state, to make that kind of investment knowing that there could be an initiative to drive them out of business and make their investment absolutely worthless. He observed the Initiative process, in the first 20 years these were in place, there were 22 initiative proposed for the ballot-18 passed and one was declared unconstitutional. In the last 20 years, there have been about 130 initiative proposed in which 50 made it to the ballot, 17 passed and 5 were declared unconstitutional. There are two more that will probably be declared unconstitutional. It seems when the initiative process was put in place in the early part of the century was put in place because the citizens of the state were disenfranchised because the Legislature was controlled by special interests. Now it is exactly the opposite. The Initiative process is controlled and being used by special interests and the Legislature is completely open. He pointed out this Initiative was put forth by some very narrow special interests. This should not be allowed. The whole issue should be revisited and debated in the open with everyone having access to the networks and the news and the

advertising. **{Tape : 2; Side : A; Approx. Time Counter : 59.6 - 63.1}**

Rep. Dale said there is evidence that people have considered the issue differently. He pointed out that Rep. Raney was confident that it only affected open pit heap leach mining. This does not make sense. If it is bad to use cyanide and that was the tool used, why does it not apply to underground mining or to the use of cyanide in the use of making nylons or in plating parts or anti-caking agent used by the highways in road sand. The target is obviously open pit mining and it was designed to impact a sector of mining where there aren't very many votes because there isn't very much knowledge of what goes on. Cyanide, the word, can be used to generate a lot of fear. There were not facts presented that supported a ban on cyanide mining. People have under their kitchen sinks stuff that is worse than cyanide, by quite a bit. In response to the individual miners not being hampered by I-137, the Commissioner of Political Practices advised early on in the process that employees of major mining corporations were at risk because a major part of their income came from a mining corporation. Yes, they were prevented from opposing I-137 as individuals or at least warned that they could be subject to a fine. **{Tape : 2; Side : B; Approx. Time Counter : 0 - 4.1}**

Rep. Orr said he wanted to address some of the philosophical arguments about the Initiative process and whether the Legislature has the right to overrule the people. He said it goes to Section 4, Article 4 of the Constitution. The political parties of Democrat and Republican do not have the same connotation as they did. He explained the two parties we have now are simply the socialist party A and socialist party B. If you go to the Constitution, it guarantees to every state a republican form of government, meaning that we are democratically elected by a majority, which is not a majority of the people but a majority of people who show up at the polls. We are not here because of the will of the people. We are here because of the will of the people who showed up to vote. Ben Franklin was asked as he left the convention, was asked by a woman "Sir, what have you given us?". He said, "We have given you a Republic, Mam, if you can keep it." Our founders were students of history and they knew that democracy would not work. Mob rule or the will of the majority doesn't work. So they gave us something different. The Initiative process has flawed that. The forces that were not for us having a Republican form of government started as soon as the ink was dried. They started overturning that form of government and have worked to do so ever since. The fact remains that we are not a democracy; we are not here to do the will of the majority of the people because we can't. We cannot on every

issue poll people and decide what to do. We are here to vote our conscious and that is what defines a Republic from a Democracy. We are to come here and use our best judgement and that is what we need to do on this. He said his best judgement was to support this bill that is before us. **{Tape : 2; Side : B; Approx. Time Counter : 4.1 - 6.8}**

Rep. Wagner said in his district the majority voted not to support I-137. He pointed out Montana was fiftieth in economic development. Jobs and Income has been a big issue this Session. He said this was not the way to reward Jobs and Income by eliminating an industry that contributes about \$556 million dollars annually to the economy. That is just looking at gold and silver heap leaching, not mining in general because that is \$2.25 billion. If you are able to pass a bill out of this Legislature and send it out to the people who voted for I-137, 196,000 of them, and subpoenaed the voting record and found out who they were, would anybody here support sending each one of those people a bill for \$2,700 dollars and say that's it, you've eliminated mining so you need to make up the difference here and you need to do it for the rest of your life. He said he did not see a problem with sending the issue back out to reconsider. **{Tape : 2; Side : B; Approx. Time Counter : 6.8 - 9.3}**

Rep. Hurdle felt it was dangerous to overturn the Initiative. She said that improprieties in the election had been alluded to, and people prevented from participating. She said this issue should go to court if this was true. She did not feel the Legislature should overturn this. The Initiative was the voice of the people. **{Tape : 2; Side : B; Approx. Time Counter : 9.3 - 11.1}**

Rep. Harper said he favored responsible corporate mining in the state. He pointed out some of the Initiatives that were proposed and passed in the beginning of the history of this state dealt directly with the miner's right to unionize. That hurt the corporate process. He asked why should corporate contributions be admitted to Initiatives to make them fair. **{Tape : 2; Side : B; Approx. Time Counter : 11.1 - 14}**

Rep. Story asked Todd Everts if by passing this bill I-137 would be repealed. Everts replied no. Rep. Story said this was something people had to remember, the Legislature was not repealing the law, they were putting a Referendum out for the voters to have another chance. The Referendum process was one more choice. People feel they were harmed by I-137 will go to court and may be successful or not. If the opponents go to court and are successful, the proponents are out everything. If this goes on the ballot as a referendum, and the opponents of I-137 go

to court and win, this is still on the ballot and the proponents then can take their case again to the people without going through the initiative process. **{Tape : 2; Side : B; Approx. Time Counter : 14 - 15.6}**

Rep. Dale addressed two points. He said we speak of corporations as if they are evil entities that have great undue influence. Most of these are people. Corporations are treated as persons under the law. To make them an evil entity because it is convenient, when sometimes they are the only entities that can come in and get these big projects off the ground is a little short sighted. He addressed comments about the fair play. If it were such a fair thing, why did people in the Attorney General's Office arbitrarily leave off the fiscal note of \$200 plus million dollar impact on the Montana taxpayer if I-137 passed. They left off the fiscal note regarding the loss of \$200 plus million dollars of future tax revenues. That was in the fiscal note submitted to the Attorney General's Office to be put on the ballot and one of their deputy attorney generals arbitrarily made the decision to leave it off. A Montana taxpayer wasn't told there was that kind of impact. **{Tape : 2; Side : B; Approx. Time Counter : 15.6 - 18.3}**

Rep. Stovall said he viewed the bill as a fairness issue. It is only fair to send this Initiative back to the people. The people were not allowed to hear both sides on an equal basis. On that point of view alone, the people should have another look at it. Corporations cannot buy Initiatives. He cited an example of the Petroleum Marketers Association who spent more on the election and still lost, in the last election. **{Tape : 2; Side : B; Approx. Time Counter : 18.3 - 19.4}**

Rep. Ohs addressed the will of the people issue. He said late last year we heard the will of the people was the poll. This legislation is not repealing the Initiative that was passed, but is saying the playing field was not level and we have every right as Legislators to try to remedy that. The will of the people can mean many things. It can possibly be a poll, an Initiative, or what the Legislature does because they are elected by the people. He said if he supported the will of the people in his district, who overwhelmingly voted against this Initiative, he would have to vote for this bill. **{Tape : 2; Side : B; Approx. Time Counter : 19.4 - 20.8}**

Rep. McGee read his comments into the record, regarding the need for information he had requested from the Secretary of State's Office and the Commissioner of Political Practices, which he had not received. He was reluctant to vote without this information.

**EXHIBIT**(nah58a06) {Tape : 2; Side : B; Approx. Time Counter : 20.8 - 22.9}

Rep. Gutsche said she wanted to address the issue about the mine not being able to tell their story. She said there was one notable exception to that, which was the Seven-Up Pete Joint Venture which was exempted. They were exempted because the Commissioner of Political Practices ruled that they were a partnership so they did form a political action group and could spent during the entire campaign. She pointed out that 65 out of 100 house districts and 32 out of 52 Senate Districts voted in favor of this Initiatives. She felt it was clear folks were in favor of this and the mining companies had a chance to tell their story. Opponents of the bill outspent the proponents by \$30 thousand dollars. {Tape : 2; Side : B; Approx. Time Counter : 22.9 - 26.4}

Rep. Erickson noted that one of the things that had been said was that there wasn't enough information out there, that people weren't knowledgeable enough. He said he feels that every day when we vote on the floor of the House. He said the people he talked to in Missoula did vote in favor of the Initiative. "One of the things the people in Missoula knew was that if they voted yes on I-137, that there was a good chance that there wouldn't be a mine on the Blackfoot, and they love the Blackfoot." They didn't know a lot about the difference between vat cyanide leaching and pit and leach, but they knew enough to make a decision. He said he went door to door to get signatures on this during his election campaign. He used the arguments that were used by MEIC that this was a failed technology and he still believed it. He pointed out there were problems of scale with this technology, problems with ground water with this technology and these problems extend over time. {Tape : 2; Side : B; Approx. Time Counter : 26.4 - 29}

The question was called. The motion **PASSED** 11-9 on a roll call vote.

#### EXECUTIVE ACTION ON SENATE BILL 345

Rep. Tash **MOVED DO CONCUR SB 345.** {Tape : 2; Side : B; Approx. Time Counter : 32.0}

Rep. Curtiss said she wanted to address again the Initiative process. It has been her understanding that the Initiative process was a process where the grassroots people can have a way of participating in making governmental decisions. In her mind, this process on I-137 does not represent a grassroots movement,

from "we the people." Any time that a special interest group hires people from out of the state to come in and gather signatures on petitions is not coming from grassroots Montanans. It was acknowledged that about half of the signatures on these petition, were obtained by these hired signature gatherers. Also, they indicated it was someone from Oklahoma hired to do this. However, someone indicated that a person who was gathering signatures that solicited their signature was from the state of Washington. She felt this was a flawed process and needs to be addressed. This should not be a process that can be bought and instigated by a special interest group. **{Tape : 2; Side : B; Approx. Time Counter : 29 - 34.1}**

Rep. Tuss said the idea of the initiative process being grassroots was right. However, the way the process was approached was by people who were paid and had absolutely no stake in the issue, who were out gathering signatures. She thought, however, that the perception in her home town was this was done honorably and the vote cast in this manner. **{Tape : 2; Side : B; Approx. Time Counter : 34.1 - 37.1}**

Rep. Story clarified that the bill does not deal with the Initiative process. **{Tape : 2; Side : B; Approx. Time Counter : 36.7 - 37.6}**

Rep. Orr said he had three amendments to the bill offered by Rep. Cobb, which would substantially change the bill. He suggested these should wait for the floor debate. He said the first amendment would allow only existing mines to continue expansion, the second one gets rid of the voting provision and the third one exempts the McDonald Mine. He pointed out that Rep. Cobb reads every bill thoroughly. Rep. Hurdle recommended considering the bill as presented and have the larger debate on the floor regarding the amendments. **{Tape : 2; Side : B; Approx. Time Counter : 37.6 - 38.6}**

Rep. Eggers pointed out one of the bills may provide a solution but he did not think there should be two solutions. He recommended defeating SB 345 and let SB 344 go forward. **{Tape : 2; Side : B; Approx. Time Counter : 38.6 - 39.5}**

Rep. Dale offered an amendment by the bill sponsor. He **MOVED** the amendment. **EXHIBIT(nah58a07)** He explained this would delete the 2/3 vote of the electorate voting on the proposal which would make it consistent with every other type of legislation. **{Tape : 2; Side : B; Approx. Time Counter : 39.5 - 43.4}**

Rep. Harper said the bill in its current form seems to at least allow the electors a vote. This would take away the guarantee of

a citizen vote. Rep. Dale said no it would simply require a 51%. Todd Everts said this would strike the 2/3 vote and allow a local majority vote. He added that Greg Petesch said that a two thirds vote is constitutionally suspect. This would allow a majority vote to approve this. Rep. Tash said he was in favor of the amendments because it put it back to the local electorate with a simple majority. **{Tape : 2; Side : B; Approx. Time Counter : 43.4 - 45.5}**

Rep. McGee asked for clarification. Everts replied that Article 5, Section 11 of the Constitution, says that no bill shall become law except by a vote of majority of all members present and voting. That is specific to the Legislature. In the Constitution, it specifically provides for super majorities in certain cases. It is Petesch's interpretation that when the Legislature gives the local government the ability to hold this election, and is basically passing legislation at the local level, that it is controlled by that Article 5, Section 11 provision, it should be the majority vote. **{Tape : 2; Side : B; Approx. Time Counter : 45.5 - 46.5}**

Rep. Younkin **MOVED A SUBSTITUTE AMENDMENT.** On amendment number one, the second line of the insert where it says by resolution or referendum would read "by referendum". This means the county commissioners could put a referendum on the ballot but they could not do it by resolution. Resolution implies that the county commissioners could do it by themselves without a vote.

The question was called. The motion **PASSED** 13-7. **{Tape : 2; Side : B; Approx. Time Counter : 46.5 - 57.7}**

Rep. Dale **MOVED DO CONCUR AS AMENDED.**

Rep. Harper pointed out page 3, small miners were excluded. He said this would allow the expansion of a mine to operate for the life of the mine and also allows the hundreds of entities that have received either a valid exploration license, a small miners exclusion statement or an operating permit prior to November 3, to be exempted from this bill. He felt this would directly and immediately overturn the vote of the people. Rep. Dale said there were 18-22 outstanding operating exploration licenses that apply and hundreds of small miners which also include industrial, mineral and gravel process, all kinds of things not related to gold mining. Rep. Harper said these people were excluded regardless of what they hold a permit for. He said you could get a vermiculite miner to hold the license for your cyanide heap leach gold operation. **{Tape : 2; Side : B; Approx. Time Counter : 57.7 - 63.6}**

Rep. Dale said the DEQ would not allow a gold property to be held under a vermiculite or industrial mineral exploration license or operating plan. **{Tape : 3; Side : A; Approx. Time Counter : 0 - 0.3}**

Rep. Harper replied that they could do it. Rep. Dale commented this would be deception. Rep. Story pointed out this section of law deals with open pit heap leach or vat gold and silver mining. He said there may be some small miners that are using a vat process. Rep. Tash clarified this was very specific to cyanide heap leach and vat leach open pit gold and silver mining. **{Tape : 3; Side : A; Approx. Time Counter : 0.3 - 2.3}**

Rep. Story clarified subsection 3 grandfathers everybody in that has an exploration permit, license or small miner exclusion or an operating permit in action before the election that is using the technology prohibited under I-137. **{Tape : 3; Side : A; Approx. Time Counter : 2.3 - 4.4}**

Rep. McGee asked if you had one of these operations going I-137 didn't apply but you couldn't expand or have a new operation, which copied the intent of I-137. Rep. Erickson replied this appeared to be a clear attempt to repeal I-137, by allowing what they are allowing. **{Tape : 3; Side : A; Approx. Time Counter : 4.4 - 6.1}**

Rep. Story said he agreed with the assessment. It takes any body that is already in the system either with an exploration permit or an operating permit and allows them to continue. If you don't have an exploration permit you can't go somewhere now, under this statute, and go into a process of exploring and developing a heap leach open pit gold mine unless you get into a county that has a 2/3 vote to allow you to do it. **{Tape : 3; Side : A; Approx. Time Counter : 6.1 - 6.7}**

Rep. Gutsche pointed out that it was not the intent of I-137 to exclude all these categories.

Rep. Story asked what an exploration permit did. Jan Sensibaugh from the department said an exploration license was very open ended; they don't have to tell what mineral they are exploring for or anything about the technology they are going to use. It is just a license to let them go out and look for something. **{Tape : 3; Side : A; Approx. Time Counter : 6.7 - 8.5}**

Rep. Harper suggested the committee discuss local option environmental laws, since that is what the bill did. Some people very strenuously objected to local options being able to impose stronger laws and now this says they can go the other way. He

pointed out the liability issue across county lines. If Lewis and Clark County approves the mine on the Blackfoot, this county would suffer very few of the consequences because we are not downstream. This would affect downstream counties. He pointed out this bill raised many policy issues that could not be fully considered. **{Tape : 3; Side : A; Approx. Time Counter : 8.5 - 10}**

Rep. Dale commented about crossing county boundaries. He pointed out that no cyanide had ever entered a major stream in Montana. All existing operations are closed circuit operations. People that are the most emotional about the issue live downstream from the Bonner Dam. Those heavy metals result from a completely different process, a process that is no longer used. Rep. Raney said cyanide is not the issue but rather cyanide leach open pit, not the use of cyanide. **{Tape : 3; Side : A; Approx. Time Counter : 10 - 11.3}**

The question was called on SB 345 as amended. The motion **FAILED** 10-10 on a roll call vote. Rep. Dale **MOVED A SUBSTITUTE MOTION TO TABLE**. The motion PASSED unanimously.

**ADJOURNMENT**

Adjournment: 7:23 P.M.

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REP. BILL TASH, Chairman

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DEB THOMPSON, Secretary

BT/DT

**EXHIBIT (nah58aad)**